IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1990 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

MANAV SURGEN ASHRAM

Versus

DIRECTOR

Appearance:

MR MUKESH R SHAH for Petitioner

MR. D. DAVE, AGP, FOR THE RESPONDENTS

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 26/03/96

ORAL JUDGEMENT

Rule. Service of rule is waived.

The petitioner challenges the order dated 2nd March 1996 (Annexure "D" to the petition) by which, firstly for irregularities found before issue of show cause notice, a direction for curtailing 5% of its grant,

and secondly for not following the government resolution for giving admission to boys and girls in equal proportion, it has directed that the grant should be paid only to the extent of students both boys and girls in equal proportion.

It is contended by the learned counsel for the petitioner that so far as the second part of the impugned order is concerned, it has been made without any prior notice to the petitioner about the alleged contravention of the government policy in that regard. So far as the first part of the order about 5% curtailment in the grant is concerned, the learned counsel for the petitioner contends that, firstly, it is a non-speaking order and, secondly, in view of the finding that, by reports dated 20th February 1996 and 19th September 1995, the affairs of the petitioner-institution are running smoothly, and there are no financial irregularities the conclusion is one to which no reasonable person would reach.

Mr. Dave, learned Assistant Government Pleader appearing for the State, fairly states that, so far as the second part of the order is concerned, no notice in that respect is given to the petitioner. He submits that notice may now be served on the petitioner and a fresh order would be made. So far as the challenge to the first part of the order is concerned, the learned Assistant Government Pleader contends that since the order has been passed after issuance of show cause notice to the petitioner by taking into consideration the reply submitted by it, this Court not exercising appellate jurisdiction ought not to interfere with the order.

So far as the direction to release grant only to the extent girls and boys are in equal proportion is concerned, admittedly, the order has been passed without notice to the petitioner. This deserves to be quashed on this ground alone. As to what future course the State can adopt is up to them.

So far as the first part of the order is concerned, in my opinion, both the contentions made by the learned counsel for the petitioner are well founded. Show cause notice dated 4th September 1995 was served on the petitioner disclosing that, on the date of inspection (8th August 1995), out of 130 students shown to be admitted in the register, only 71 students were present and on that basis, admission of the absentee students was stated to be doubtful. Secondly, it was stated that there was no sufficient stock of food-grain for 130 students. The third defect which was pointed out that

though there is light connection in the building, only three rooms have one bulp each and other rooms did not contain any bulp and there is no permanent wire fitting in the building. The fourth irregularity which was observed is that there is no absent report from the students and, therefore, it is not possible to find out for what reason the students were absent and where they have gone. The last offending act on the part of the petitioner-institution was stated to be that teaching and non-teaching staff belong to one community and there is no proof that it has given effect to reservation.

A reply was submitted by letter dated 14th September 1995 pointing out that inspection of the school has taken place on 8th August 1995. 10th August 1995 being the day of Raksha Bandan, most of the students have gone to their houses some of them have left even without submitting leave reports. It is stated that 10 students have gone home with leave applications. About shortage of food-grains, it is stated that stock of food-grain was purchased for 15 days at a time. Therefore, on 8th August 1995, when the school was inspected, the difference of quantity of grains purchased and consumed was there in the stock and fresh stock was due to be purchased. About the wire fitting, it was explained that there was wire fitting in the building and on account of short-circuit, the fitting was burnt out and therefore there was only temporary arrangement with one pulp in three rooms. The repairing work was on, which would be completed shortly. As regards community-wise staff, it was explained that the teaching staff consists of three different communities. Only two cooks are of same community. Moreover, it was pointed out that there is no circular of the government which prohibits employment of staff from the same community.

After receiving this reply, the impugned order has been made on 2nd March 1996. In between, two more inspections had taken place, about which reports dated 19th September 95 and 20th February 1996 have been submitted giving a clean chit to the working of the institution. The facts about these reports found place in the order itself. The order nowhere states that, out of five offending defects, which one is found to have been proved on record and by which material, except for the report of invigilator which was made foundation of notice dated 4th May 1995. It appears very strange in the first place that the reporting authority merely on the basis of inspection of one day by recording attendance of students on that particular day jumps to the conclusion that the absentee students might not have

been admitted at all. No reasonable person would merely on the basis of one inspection by counting heads of the students present can entertain even a doubt about admission being ghost admission. In fact, that was the only major allegation levelled against the petitioner which could warrant punitive action against it. The other defects pointed out in the show cause notice at best would require corrective measure and warning to the concerned institution to remove the defects before any punitive action could be taken, even if it is accepted that these were irregularities. It also appears strange on a given date absenteeism of the students without leave applications or there being paucity of electricity arrangement or combination of staff from different castes and communities, could give rise to punitive action. Had a little care taken to make useful and meaningful inspection by enquiring on the spot, the action could not have at all been initiated unless something more could have been found. Such allegations could not be made actionable ground for reducing grant, unless such defects are persisted with. These observations I am making assuming that these defects nos. 2 to 5 pointed out in the show cause notice stand proved or satisfied. The order is far from saying so. While two subsequent reports clearly indicate none of the defects pointed out in the show cause notice is persisting. This gives clear go-by to the charge of admitting ghost students or any financial irregularities. The subsequent reports further justify that the pleas taken by the petitioner in its reply to the show cause notice were well founded and the defects, if any, were not persisting. There being no finding about any particular defect being found to be existing or proved, mere vague assertion that there were defects prior to the subsequent report can be as vague finding as possible. The order is a monument of non-speaking order about the breaches committed by the petitioner.

That apart, looking to the nature of the allegations made in the show cause notice dated 4th September 1995 on the basis of inspection dated 8th August 1995 and two subsequent reports by the inspecting officer giving a certificate of smooth running of the petitioner-institution are sufficient to hold that under these circumstances no reasonable man would have reached the conclusion for curtailing the grant on the basis of the allegations made in the notice dated 4th September 1995. Therefore, in my opinion, the first part of the order is also not sustainable.

Accordingly, the petition succeeds. The order

dated 2nd March 1996 is quashed and set aside and the respondents are directed to release full grant for the year 1995-96 as early as possible. Rule is made absolute with no order as to costs. Direct service is permitted.

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(swamy)